

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS  
LIABILITY LITIGATION

MDL No. 2419  
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**THE PLAINTIFFS' STEERING COMMITTEE'S PROPOSED AGENDA FOR  
THE FEBRUARY 11, 2016 STATUS CONFERENCE AND DISCOVERY HEARING**

The Plaintiffs' Steering Committee proposes the following agenda for the February 11, 2016 status conference (before both Judge Zobel and Judge Boal at 2:00 p.m.) and discovery hearing (before Judge Boal following the status conference). The defendants, the Post Confirmation Officer, the FDA, and the U.S. Attorney's office have been given an opportunity to comment on this proposed agenda.

**A. MOTIONS FOR WHICH ORAL ARGUMENT IS REQUESTED DURING THE STATUS CONFERENCE**

1. Saint Thomas Entities Motion for Leave to File Global Motion for Partial Summary Judgment on Putative Claims for Actual Agency and Direct Liability [Dkt. 2594]
  - a. PSC's Opposition [Dkt. 2618]

**B. MOTIONS FOR WHICH ORAL ARGUMENT IS REQUESTED DURING THE DISCOVERY HEARING**

2. Tennessee Clinic Defendants' Motion to Compel Discovery Responses [Filed in Case No. 1:13-cv-12737, Dkt. No. 45]
  - a. Plaintiffs Opposition [Filed in Case No. 1:13-cv-12737, Dkt. No. 49]
  - b. Tennessee Clinic Defendants' Motion for Leave to File Reply [Filed in Case No. 1:13-cv-12737, Dkt. No. 54]

**C. REPORT TO THE COURT**

3. Status of bankruptcy
4. Status of insurance declaratory judgment actions
  - c. *State Farm Fire and Casualty Company v. Specialty Surgery Center PLLC, et al.*, 2:15-cv-00026 (M.D. Tenn.)
5. Status of discovery
  - d. Court rulings update:
    - i. PSC's Motion to Compel Specialty Surgery Center and Dr. Lister to Provide Documents and Testimony [Dkt. 2612]
    - ii. Order Denying PSC's motions for protective order regarding Box Hill Defendants' [Dkt. 2353] and Premier Defendants' [Dkt. 2372] notices of depositions by written questions [Dkt. 2528]
      1. PSC has submitted cross-examination questions
      2. Premier and Box Hill defendants to submit questions on redirect and the PSC will serve questions on recross.
    - iii. Update on access to Rust-Omni HIPAA-compliant repository [Dkt. 2615]
7. Status of litigation track
  - a. Update On Order Amending Bellwether Schedule [Dkt. 2596] and Selection of Bellwether Trial Cases
  - b. Update on Common Expert Discovery
8. Report from *Pro Se* Liaison
9. Schedule for future status conferences
  - a. March 10, 2:00 p.m. (Zobel); 3:00 p.m. (Boal)
  - b. April 14, 2016, 2:00 p.m. (Zobel); 3:00 p.m. (Boal)

**D. FULLY BRIEFED MOTIONS FOR WHICH ORAL ARGUMENT IS COMPLETED**

10. PSC's Motion for Partial Summary Judgment Regarding Product Liability Claims Against Saint Thomas Outpatient Neurosurgical Center [Dkts. 2300, 2302] (*oral argument held at December 17, 2015 status conference*)

- a. Saint Thomas Entities' Opposition [Dkt. 2465]
  - b. Tennessee Clinic Defendants' Response to PSC's Statement of Undisputed Materials Facts in Support of Motion for Partial Summary Judgment [Dkt. 2467]
  - c. PSC's Reply in Support of its Motion [Dkt. 2508]
11. Tennessee Clinic Defendants' Cross-Motion for Partial Summary Judgment on Product Liability Claims [Dkts. 2462, 2463, 2464, 2467] (*oral argument held at December 17, 2015 status conference*)
- a. Saint Thomas Entities' Joinder [Dkt. 2465]
  - b. PSC's Opposition [Dkt. 2508]
  - c. PSC's Response to Tennessee Clinic Defendants' Statement of Undisputed Facts [Dkt. 2509]
  - d. STOPNC Defendants' Surreply [Dkt. 2537]
12. Tennessee Clinic Defendants' Motion to Stay Decision on Cross-Motions for Partial Summary Judgment on Product Liability Claims [Dkt. 2466] (*oral argument held at December 17, 2015 status conference*)
- a. PSC's Opposition [Dkt. 2548]
13. PSC's Motion to Amend Case Management Deadlines Regarding Specialty Surgery Center Cases [Dkt. 2506] (*oral argument held at January 14, 2016 status conference*)
- a. Specialty Surgery Center and Dr. Kenneth Lister's Stipulation on Extension of Time to Respond until January 8 [Dkt. 2544]
  - b. Specialty Surgery Center's Response [Dkt. 2564]

**E. BRIEFING IN PROGRESS**

**Discovery-Related Motions**

14. PSC's Supplemental Brief and Motion *in Limine* to Exclude References to Michael O'Neal, O'Neal's Pharmacy Consulting Services, and Saint Thomas Neurosurgical's Medical Executive Committee [Dkt. 2608, 2609]
- a. STOPNC Defendants' Notice of Stipulation on Extension of Time to Respond until February 18, 2016 [Dkt. 2627]
15. Tennessee Clinic Defendants' Motion for Qualified Protective Order [Filed in Case

No. 1:13-cv-12737, Dkt. No. 50]

- a. PSC's Opposition [MDL Dkt. 2634, and also Filed in Case No. 1:13-cv-12737, Dkt. No. 55]
  - b. Response by Tennessee Attorney General (to be filed February 12, 2016)
  - c. Tennessee Clinic Defendants' Reply (to be filed February 15, 2016)
16. PSC's Motion for Qualified Protective Order Concerning Production of Certain Information Maintained by Third Party Payors [MDL Dkt. 2629]

**Dispositive Motions**

17. Plaintiffs' Motion to Strike Certain Affirmative Defenses, Cross-Claims, and Third Party Claims in Box Hill's Answers [Dkts. 2451, 2452]
- a. Box Hill's Opposition [Dkt. 2561]
  - b. Plaintiffs' Reply [Dkt. 2603]
18. Abdul Barakat, M.D. Motion to Dismiss Product Liability Claims in *Simas v. Abdul R. Barakat, M.D. et. al* [Dkt. 2390]
- a. Opposition to Motion (Dkt. 2591, 2592)
19. Ocean State's Motion to Dismiss Product Liability Claims in *Hanson v. Ocean State Pain Management, P.C.* [Dkt. 2388]
- a. Amended Motion of Ocean State for Entry of Dismissal for Failure of Plaintiffs to File a Timely Opposition [Dkt. 2610, 2611]

Dated: February 9, 2016

Respectfully submitted,

**/s/ Thomas M. Sobol**

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*Plaintiffs' Lead Counsel on behalf of the  
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**CERTIFICATE OF SERVICE**

I, Thomas M. Sobol, hereby certify that I caused a copy of the above Proposed Agenda to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: February 9, 2016

**/s/ Thomas M. Sobol**

Thomas M. Sobol, BBO # 471770